FILED
NOV 1 1968

IN THE

Supreme Court of the United States

October Term, 1968
No. 596

DR. ALLEN DAHL; LYLE EINHAUS; DR. FRANK J. RIGOS; KENNETH ROGSTAD; DR. RICHARD CLARK; DENNIS G. HAGEN; SELMER THORP; and DR. CHARLES R. WOLFE,

Appellants,

v.

THE REPUBLICAN STATE COMMITTEE, and C. MONTGOMERY JOHNSON, Chairman,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

APPELLEES' MOTION TO DISMISS OR AFFIRM

BRADLEY T. JONES
EDWARD N. LANGE
RICHARD A. DERHAM
Attorneys at Law
977 Dexter Horton Building
Seattle, Washington 98104
Attorneys for Appellees.

SUBJECT INDEX

Page

APPELLEES' MOTION TO DISMISS OR AFFIRM .. 1

JURISDICTION 1

QUESTIONS PRESENTED 2

ARGUMENT 3

I. Appellees are not a state officer or state commission or board within the meaninf of 28 U.S.C. § 2281. 3

A. 28 U.S.C. § 2281 is to be strictly construed. 3

B. The officers and governing body of a political party, are not "state officers" or state "board or commission" within the usual meaning of those terms. 6

II. The Appellants have not raised a genuine challenge to the constitutionality of a state statute. 8

III. The questions raised by Appellant are so unsubstantial as not to warrant further argument, and the judgment should be affirmed. 10

A. The one man-one vote principle is not applicable to the election of the President of the United States of America. 10

B. The doctrine of "one man-one vote" is not applicable to the selection of political party officials. 13

APPENDIX A A-1

Opinion and order, Kyle v. Adams, cause No. 66-321-Civ-EC, (U.S.D.C., Florida S.D.). A-1

TABLE OF CASES

	Page
Aaron v. Cooper, 261 F.2d 97 (8th Cir. 1958).	9
Avery v. Midland County, ... U.S. ....., 88 S. Ct. 1114, 20 L. Ed.2d 39 (1968).	13
Azevedo v. Jordan, 47 Cal. Rptr. 125 (D.C.A. 1965).	18
Bailey v. Patterson, 369 U.S. 31, 82 S. Ct. 549, 7 L. Ed.2d 512 (1962).	3
Bunting v. Board of Canvassers and Registration, 153 A.2d 560 (R.I. 1959).	6
Harrell v. Sullivan, 40 N.E.2d 115, 120 (Ind. 1942), reh. den., 41 N.E.2d 354.	7
Kearns v. Howley, 41 Atl. 273 (Pa. 1898).	6
Kyle v. Adams, Cause No. 66-321-Civ-EC.	15
Lynch v. Torquado, 343 F.2d 370 (3rd Cir. 1964).	17
Moody v. Flowers, 387 U.S. 97, 87 S. Ct. 1544, 18 L. Ed2d 643 (1967).	2
Oklahoma Gas & Electric Co. v. Oklahoma Packing Co., 292 U.S. 386, 54 S. Ct. 732, 78 L. Ed. 1318 (1934).	5
Phillips v. United States, 312 U.S. 246, 61 S. Ct. 480, 85 L. Ed. 800 (1941).	3, 8
Rogers v. State Committee of the Republican Party, 232 A.2d 852 (Sup. Ct. Law Div. N.J. 1967).	16
Sailors v. Board of Educ., 387 U.S. 105, 87 S. Ct. 1549, 18 L. Ed.2d 650 (1967).	14, 15
Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987 (1944).	7
State ex rel Tomvlin v. Bivens, 149 S.E.2d 284 (W.Va. 1966).	19
Terry v. Adams, 345 U.S. 461, 73 S. Ct. 809, 97 L. Ed. 1152 (1953).	7
Wilentz v. Sovereign Camp, 306 U.S. 673, 59 S. Ct. 709, 83 L. Ed. 994 (1939).	3, 4

CONSTITUTIONAL PROVISIONS

Page

United States Constitution, Article II
Sec. 1 Paragraph 2 10

United States Constitution,
Amendment XII 11

United States Constitution,
Amendment XIV 7, 20

United States Constitution,
Amendment XV 7

FEDERAL STATUTES

28 U.S.C. § 1253 2

28 U.S.C. § 2281 ..... 2, 3, 5, 8

Revised Rules of the Supreme Court of the
United States, Rule 16 1

STATE STATUTES

Washington Laws 1965 RCW
29.18.010, et. seq. 10

Washington Laws 1965 RCW
29.42.030 15

IN THE

Supreme Court of the United States

October Term, 1968
No. 596

DR. ALLEN DAHL; LYLE EINHAUS; DR. FRANK J. RIGOS; KENNETH ROGSTAD; DR. RICHARD CLARK; DENNIS G. HAGEN; SELMER THORP; and DR. CHARLES R. WOLFE,
Appellants,
v.
THE REPUBLICAN STATE COMMITTEE, and C. MONTGOMERY JOHNSON, Chairman,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

APPELLEES' MOTION TO DISMISS OR AFFIRM

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appeal of the Appellants herein be dismissed on the ground that the appeal is not within the jurisdiction of this Court, or, in the alternative, move that the decree of the District Court be affirmed on the ground that the questions raised by Appellants are so unsubstantial as not to warrant further argument.

JURISDICTION

The jurisdiction of this court is challenged on the grounds that the three judge court was improperly convened for the

reasons that : (1) no inunction restraining the acts of a state officer or administrative board or commission is sought; and (2) no genuine challenge to the constitutionality of the state statute is raised by the complaint. For either of these reasons jurisdiction of this court is not present since the action was not one "required by any Act of Congress to be heard and determined by a district court of three judges." 28 U.S.C. § 1253. *Moody v. Flowers,* 387 U.S. 97, 87 S. Ct. 1544, 18 L. Ed.2d 643 (1967).

QUESTIONS PRESENTED

1. Whether Appellees constitute a "state officer" or a "board or commission" within the meaning of those terms in 28 U.S.C. § 2281?

2. Whether the adoption by a party state committee of a rule establishing a formula for the allocation of delegates to a state convention, allegedly defective under the one man-one vote doctrine, raises a question of the constitutionality of the state statute creating the committee or merely the question of the consitutionality of the exercise of the statutory authority granted to the committee?

3. Whether the "one man-one vote" principle is applicable to the nomination of candidates for the president and vice-president of the United States of America, when the constitutional method of election to such office is not in accordance with that principle?

4. Whether the "one man-one vote" principle is applicable to the selection of officials of a political party?

ARGUMENT

I. Appellees are not a state officer or state commission or board within the meaning of 28 U.S.C. § 2281.

A. 28 U.S.C. § 2281 is to be strictly construed.

The requirements of 28 U.S.C. § 2281 are of substance and not of form. See *Wilentz v. Sovereign Camp,* 306 U.S. 573, 59 S. Ct. 709, 83 L.Ed. 994 (1939). The three judge court is a statutory creature with a limited sphere of operation. It is an extraordinary court and the technical requirements relating to its jurisdiction are to be strictly construed. *Bailey v. Patterson,* 369 U.S. 31, 82 S. Ct. 549, 7 L. Ed. 2d 512 (1962); *Phillips v. United States,* 312 U.S. 246, 61 S. Ct. 480, 85 L. Ed. 800 (1941).

The purpose of the three judge court was to prevent a single federal judge from interfering with the actions of state officers performing their duties pursuant to state statutes. Justice Frankfurter in *Phillips v. United States, supra,* clearly sets forth the background and purpose of the statute when he stated at pages 248-51:

> "By Section 266 [now 2281] . . . Congress provided an exceptional procedure for a well understood type of controversy. The legislation was designed to secure the public interest in 'a limited class of cases of special importance.' *Ex Parte Collins,* 277 U.S. 565, 567, 72 L. Ed. 990, 991, 48 Sup. Ct. 585. It is a matter of history that this procedural device was a means of protecting the increasing body of state legislation regulating economic enterprise from invalidation by a conventional suit in equity. While Congress thus

sought to assure more weight and greater deliberation by not leaving the fate of such litigation to a single judge, it was no less mindful that the requirement of three judges, of whom one must be a justice of this court or a circuit judge, entails a serious drain upon the federal judicial system particularly in regions where, despite modern facilities, distance still plays an important part in the effective administration of justice. And all but the few great metropolitan areas are such regions. Moreover, inasmuch as this procedure also brings direct review of a district court to this court, any loose construction of the requirements of Section 266 would defeat the purposes of Congress, as expressed by the jurisdictional act of February 13, 1925, to keep within narrow confines of our appellate docket. . . . *The history of Section 266 . . ., the narrowness of its original scope, the piecemeal explicit amendments which were made to it . . ., the close construction given the section in obedience to congressional policy . . ., combine to reveal Section 266 not as a measure of broad social policy to be construed with great liberality, but as an enactment technical in the strict sense of the term and to be applied as such.*" (Emphasis Supplied)

The absolute necessity of a state officer being the party sought to be restrained was emphasized in *Wilentz v. Sovereign Camp, supra*, wherein the court stated at page 579:

"The reasons for the adoption of the extraordinary procedure prescribed by § 266 of the Judicial Code in the class of cases defined by it, and the rule that it may be invoked only when the suit is one to restrain state officers, have often been pointed out. . . . The requirement is one of substance, not of form, and it is not satisfied by joining, as nominal parties defendant,

> state officers whose action is not the effective means of the enforcement or execution of the challenged statute. . . .
>
> "By its terms § 266 embraces only those cases in which an interlocutory injunction is sought to prevent the operation of a state statute 'by restraining the action' of a state officer 'in the enforcement or execution of such statute'."

Continuing at page 582, the Court said:

> "The extraordinary procedure for a court of three judges, designed for a specific class of cases sharply defined by the statute, can not properly be extended to cases in which there is no substantial basis for relief by injunction restraining the action of state officers in enforcing or carrying into effect a challenged state statute of general application."

Likewise in *Oklahoma Gas & Electric Co. v. Oklahoma Packing Co.*, 292 U.S. 386, 54 S. Ct. 732, 78 L. Ed. 1318 (1934) the Court in the following language explained the necessity of the presence of a state officer:

> "The procedure prescribed by § 266 may be invoked only if this suit is one to restrain the action of state officers. . . . That this condition is vital is sufficiently indicated by reference to the part played by *Ex Parte Young*, 209 U.S. 123, 52 L. Ed. 714, 28 Sup. Ct. 441 . . . in inducing enactment of the section." 292 U.S. at p. 390.

Appellants apparently assume that Appellees are a state officer or a state board or commission within the meaning of 28 U.S.C. § 2281, since the question is not discussed in their jurisdictional statement. The cases cited, without

discussion, by Appellants in their jurisdictional statement at page 2 all are cases dealing with legislative redistricting and in each case a duly elected or appointed state officer, within the traditional and accepted meaning of that term was a party. Nothing in those cases is analogous or similar to the jurisdiction sought to be asserted on the basis of the actions of a political party.

B. The officers and governing body of a political party, are not "state officers" or a state "board or commission" within the usual meaning of those terms.

American political parties have historically been regarded as independent organizations of private citizens, rather than as creatures of statute. In *Bunting v. Board of Canvassers and Registration,* 153 A.2d 560 (R.I. 1959), the Court said at page 562:

> "It is well established that political parties are voluntary organizations, with inherent powers of self government."

The powers of a political party derive from the constitutional rights of the individuals making up the party. A state may seek through legislation to regulate the activities of poltical parties, but the parties are not dependent upon legislative action for their existence or powers. In the early case of *Kearns v. Howley,* 41 Atl. 273 (Pa. 1898), the Court said at pages 274-75:

> "The constitution and statutes of the Commonwealth guarantee to all citizens the right of self government, by protecting them in the exercise of the elective fran-

> chise for all officers voted for at state and local elections; and lately the law has gone farther, and has so far recognized political parties as to pass an act prescribing the duties of officers at primary elections, and imposing severe penalties for misconduct. But beyond this political parties and party government are unknown to the law. They must govern themselves by party law."

Statutory regulation of the functions of a political party does not have the effect of making state officers of party officials. In *Harrell v. Sullivan,* 40 N.E.2d 115, 120 (Ind. 1942), reh. den., 41 N.E.2d 354, the court said:

> "Political parties have been the subject of state recognition and regulation in one form or another for many years. Laws pertaining to that subject are enacted pursuant to the police power of the state but do not have the effect of making political parties administrative agencies of the government. Such laws rest on the same foundation as those for the control of other groups and organizations, in the regulation of which the state finds a public interest."

There have been numerous cases dealing with discrimination against Negro voters in southern states wherein the actions of political parties have been characterized as "state action" within the meaning of that term in the Fourteenth and Fifteenth Amendments to the United States Constitution. See *Terry v. Adams,* 345 U.S. 461, 73 S. Ct. 809, 97 L. Ed. 1152 (1953); *Smith v. Allwright,* 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987 (1944).

The question of whether a political party is a private club, considered for purposes of determining whether the

party is immune from judicial control to ensure that Negros are not denied the franchise at a meaningful stage of the electoral process, is a completely different one from the question of whether the party is an arm of the state government for the purpose of deciding whether its officials are "state officers" whose actions, as permitted and regulated by statute, can be enjoined only by a three-judge court. While the decisions of the United States Supreme Court and subordinate Federal Courts have tended toward great liberality in defining the public nature of political parties when the question of racial discrimination is involved, this line of decisions should have no bearing on the completely unrelated question involved here, which is in an area where the tendency of the same courts has been toward a strict interpretation of the term "state officer."

Therefore, Appellees move for dismissal of this appeal on the basis that they are not a state officer or a state board or commission within the meaning of those terms in 28 U.S.C. § 2281 and this court therefore has no jurisdiction.

II. The Appellants have not raised a genuine challenge to the constitutionality of a state statute.

The three judge district court, in its memorandum order of April 12, 1968 correctly characterized the Appellants' attack as not one against the statute itself but against the manner in which the Appellee committee performed pursuant to that statute. The case of *Phillips v. U.S.*, 312 U.S.

246, 61 S. Ct. 480, 85 L. Ed. 800 (1941) is peculiarly in point, wherein Justice Frankfurter, speaking for the court said:

> ". . . an attack on lawless exercise of authority in a particular case is not an attack upon the constitutionality of the statute conferring the authority even though a misreading of the statute is invoked as justification. At least not within the congressional scheme of § 266. Essentially the government seeks a restraint not of the statute but of an executive action." 312 U.S. at 252.

The only conduct by Appellees of which Appellants complain is the adoption of a formula for the allocation of delegates to the state convention. The only activities of that convention which bear upon any election is its selection of delegates to the Republican National Convention and its selection of presidential electors.

If the state committee's formula for allocation of delegates among countries had been mathematically in accordance with the one man-one vote rule, no alleged cause of action would exist. Thus, the allegation of an unconstitutional statute is in reality only a challenge to an alleged unconstitutional exercise of properly delegated authority.

To hold otherwise would be to extend the jurisdiction of a three judge court to all matters wherein a statutorily created body has acted in an alleged unconstitutional manner. The proper forum in such cases is a single judge district court. *Aaron v. Cooper*, 261 F.2d 97 (8th Cir. 1958).

Therefore, this appeal should be dismissed because of the failure of the Appellants to raise a genuine challenge to the constitutionality of the state statute.

III. The questions raised by Appellant are so unsubstantial as not to warrant further argument, and the judgment should be affirmed.

A. The one man-one vote principle is not applicable to the election of the President of the United States of America.

In considering Appellants' claim it must be remembered that the Appellee committee's powers in the selection of candidates for public office are limited to the selection of delegates to a national convention, the selection of presidential electors to be members of the electoral college, and the filling of any vacancy on the ticket. All other candidates for public office in Washington State are selected by a primary election held in accordance with R.C.W. 29.18. The validity of the primary election statute is not in issue.

Any alleged right which Appellants assert must therefore arise from the Federal Constitution in connection with the election of the President of the United States.

It would appear to be beyond argument that the constitutionally provided procedures for the election of the President and Vice President of the United States are not based upon the doctrine of one man-one vote. Article II, Section 1, Paragraph 2 of the United States Constitution reads as follows:

> "Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress, but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector."

The 12th Amendment to the United States Constitution provides for the manner of casting of votes by the electors and for the election of the President in the event that no person shall have a majority of the electoral votes. The apportionment of the electoral votes among the states is not based solely upon the population of the states. Because of the apportionment on the basis of Congressional representation, including Senators, the apportionment results in disproportionate weight to voters in the smaller states. For example, the State of Alaska has one electoral vote for each 75,389 residents, but the State of California has one electoral vote for each 392,930 persons. Thus, a voter in Alaska has approximately five times the voting strength as the voter in California in electing a Presidential elector.

The disproportionate voting is even greater in the event that no person receives a majority of the electoral votes cast. In such a situation the House of Representatives chooses the President. In choosing the President, the House of Representatives votes by states, each state having but one vote. In this situation, the State of Alaska with only approximately 250,000 persons casts a vote equal to that cast by the State of California which has approximately

18,000,000 persons. In this situation, the disparity is approximately 72 to 1.

It would appear obvious that an equally weighted vote by each person for the election of the President of the United States is not a constitutional requirement under the Federal Constitution. Appellees fail to understand how a constitutional right of an equally weighted vote in the nomination process would arise when it does not exist in the election itself.

To hold that the doctrine of "one man-one vote" is applicable to the nomination process of candidates for the president and vice presidency of the United States of America would require the elimination of the convention system as it is known today in the State of Washington and throughout the United States. The basic political unit from which delegates to the conventions are selected in the State of Washington is the precinct. The number of voters, and the percentage of Republican voters, varies from precinct to precinct. Thus "one man-one vote" is not possible in the basic voting unit from which all conventions commence.

The national conventions of neither political party base their delegate allocations solely upon the basis of "one man-one vote." The rules of the Republican National Convention which established the allocation of delegates to the next subsequent convention allocate delegates by establishing first a minimum number of delegates from each state

and then additional delegates for each congressional district, depending upon the size of the congressional district and the number of Republican voters therein. Additional delegates are allocated to a state in the event that there is a Republican governor elected in such state or in the event that the electoral vote at the last preceding presidential election was cast for the Republican nominee or in the event that the state elects a Republican United States Senator. If any state fulfills any one of the three preceding requirements it is granted a fixed number of delegates, regardless of the size of the state.

For the foregoing reason the Appellees urge that the court affirm the decree of the district court on the basis that the question is so unsubstantial as not to warrant further argument.

B. The doctrine of "one man-one vote" is not applicable to the selection of political party officials.

The principle of "one man-one vote" as enunciated by this court is limited to the election of officers exercising sovereign powers of government. No case presented to this court has extended such a doctrine to the selection of officials of a political party, such as members of Appellee committee. Even some local governments have been excluded. As the court stated in its most recent decision extending the doctrine of "one man-one vote," *Avery v. Midland County,* ..... U.S. ....., 88 S. Ct. 1114, 20 L. Ed.2d 39 (1968);

> "This Court is aware of the immense pressures facing units of local government, and of the greatly varying problems with which they must deal. The Constitution does not require that a uniform straightjacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local needs and efficient in solving local problems. Last Term, for example, the Court upheld a procedure for choosing a school board that placed the selection with school boards of component districts even though the component boards had equal votes and served unequal populations. Sailors v. Board of Educ., 387 U.S. 105, 18 L. Ed. 2d 650, 87 S. Ct. 1549 (1967). The
>
> Court rested on the administrative nature of the area school board's functions and the essentially appointive form of the scheme employed. In Dusch v. Davis, 387 U.S. 112, 18 L. Ed. 2d 656, 87 S. Ct. 1554 (1967), the Court permitted Virginia Beach to choose its legislative body by a scheme that included at-large voting for candidates, some of whom had to be residents of particular districts, even though the residence districts varied widely in population." 20 L. Ed. at pp. 53-54.

It would appear beyond argument that the Appellee committee is not a "unit with general governmental powers over an entire geographic area." Rather it is more in the nature of an administrative board similar to that approved by the Supreme Court in the case of *Sailors v. Board of Educ.*, 387 U.S. 105, 87 S. Ct. 1549, 18 L. Ed. 2d 650 (1967). In that case a constituency of disproportionate voting population (local school districts) selected the delegate representatives to the complained of governing body which exercised certain governmental powers over the entire

geographical area. In the instant case, county central committees, meeting pursuant to R.C.W. 29.42.030, select a state committeeman and committeewoman who become members of the Appellee state committee. The major point of distinction in the cases is the fact that in the *Sailors* case the complained of public body was exercising traditional governmental functions and was not, as in this case a quasi-private body related to and involved in but not exercising governmental functions.

Five lower courts have had occasion to consider the question raised by Appellants. All concur that the organization of a political party need not be on the basis of "one man-one vote." In the case of *Kyle v. Adams,* Cause No. 66-321-Civ-EC in the United States District Court for the Southern District of Florida, Miami Division, the Republican County Chairman for Dade County and a candidate for the Republican State Executive Committee sought a declaratory decree that the Florida statute providing for the organization of the Florida State Executive Committee was unconstitutional as denying equal protection of the law. The Florida statute creates a State Executive Committee consisting of a man and a women from each county in the State, regardless of the populations of the counties. The Executive Committee had powers practically identical to those of Apellee State Committee in this State. A three-judge court dismissed the action on its merits. The Court indicated that the Republican Committee exercised no legislative functions and the functions which they did exercise

were not public or governmental powers or duties. The few instances in which they did nominate party nominees were too remote and "with such minimal relationship to governmental activity as to include it within the one man-one vote principle." A copy of the opinion of the Judges is attached as an appendix to this brief since the decision was not reported.

The case of *Rogers v. State Committee of the Republican Party*, 232 A.2d 852 (Sup. Ct. Law Div. N.J. 1967), is another action challenging a state statute creating the state committees of political parties. The New Jersey statute also provided that each county was to elect one male and one female member to the state committee. The Plaintiff sought to have the committee dissolved as being created pursuant to an unconstitutional statute which denied the plaintiff equal protection since the population of the various counties in New Jersey was not equal. The functions of the state committee and the statute creating the state committee in New Jersey were again, for all practical purposes, identical to Washington state's. After reviewing the United States Supreme Court cases dealing with the one man-one vote doctrine, the Court said at page 855:

> "Plaintiffs here seek to extend the one man-one vote doctrine to limits beyond any reported decision. The Court agrees with defendants that the governmental functions given to the State Committee and its Chairman are minimal in significance. They exercise no legislative functions. Their principal function is the administration of the party.
>
> * * *

> "It is difficult to determine that Plaintiffs have suffered any direct or substantial harm under the facts of this case."

The States of Florida and New Jersey have presidential primary elections at which delegates to the National Political Conventions are elected. The sole distinction possible between the New Jersey and Florida situation and that in the State of Washington is that the political parties in Washington hold conventions to select delegates to the national conventions which nominate the party's candidates for President and Vice President of the United States. That no constitutional right of Plaintiffs is abridged by this procedure is discussed above.

In the case of *Lynch v. Torquado,* 343 F.2d 370 (3d Cir. 1964), the Court again affirmed the dismissal of a complaint in which the plaintiffs asserted the denial of equal protection because of the manner of election of the county chairman pursuant to the statutes of the State of Pennsylvania. The county chairman is elected by precinct committeemen who are elected at a primary election. Plaintiffs alleged that since some precincts had in excess of 700 registered Democratic voters but others had only 18 registered Democratic voters, the right to an equally weighted vote was denied. In dismissing the complaint, the Court said at page 372:

> "But the citizens constitutional right to equality as an elector as declared in the relevent Supreme Court decisions, applies to the choice of those who shall be his elected representatives in the conduct of government,

not in the internal management of a political party. It is true that this right extends to state regulated and party conducted primaries. However, this is because the function of primaries is to select nominees for governmental office even though, not because, they are a party enterprise. The people when engaged in primary and general elections for the selection of their representatives in their government, may rationally be viewed as the 'state' in action, with the consequence that the organization and regulation of these enterprises must be such as accord each elector equal protection of the laws. In contrast, the normal role of party leaders in conducting internal affairs of their party, other than primary or general elections, does not make their party offices governmental offices for the filling of these offices state action which must satisfy the requirements of Gray v. Sanders."

In the case of *Azevedo v. Jordan,* 47 Cal. Rptr. 125 (D.C.A. 1965), the Plaintiffs also asserted the doctrine of one man-one vote applied to the internal organization of the state central committee. The California State Republican Committee consists of nominees for public office and incumbent office holders and members appointed by the incumbents and the nominees. The legislature amended the act to provide that incumbent office holders would appoint eight persons to the central committee but nominees for office could appoint only three. Plaintiff appellant was a nominee and not an incumbent and thus asserted his denial of equal protection. In dismissing the claim, the Court said at page 130:

"Appellant's contention that the distinction violates the principle of one man-one vote announced in *Baker*

v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L.Ed.2d 663 is without merit. The State Central Committee is not an elective representative body of the voters exercising sovereign powers and § 8202.35 in no way impairs the successful exercise of the franchise."

In the case of *State ex rel Tomvlin v. Bivens* 149 S.E.2d 284 (W. Va. 1966) an action was brought to compel the acceptance of an election board of those persons who had been nominated by the duly elected party committee. The defense was based on the contention that the statute creating the political party executive committee violated the equal protection clause as not being constituted under the "one man-one vote" doctrine and the executive committee of the political party was vested with sovereign power and its members were public officers. The court denied these contentions and held that the members of the executive committee of the political party were not public officers, and the "one man-one vote rule" would be applicable only to the election of public officers. In this case the members of the committee were elected on a manifestly unequal population basis from districts which were then malapportioned.

The foregoing cases, each directly in point, conclusively indicate that there is no constitutional right to an equally weighted vote in the internal organization of a statutorily created political body. Likewise the statute creating and providing for the formation of a state committee on the basis of geographical units and not upon population, vio-

lates no right protected or granted under the Fourteenth Amendment to the United States Constitution.

Therefore, Appellees urge the court to affirm the decision of the court below, the question being so unsubstantial as not to warrant further argument.

Respectfully submitted,

BRADLEY T. JONES

EDWARD N. LANGE

RICHARD A. DERHAM

Attorneys for Appellees.